

## STAFF REPORT

### INTRODUCTION

Mr. Michael Menges (d.b.a. Macdoel General Store) was the owner and operator of four petroleum underground storage tanks in Macdoel, California. On December 28, 1994, the USTs were excavated and removed from the site under permit from the Siskiyou County Health Department. Pursuant to section 2672 of California Code of Regulations Title 23, five soil samples were collected from beneath the former locations of the USTs by a Siskiyou County Health Department representative. The county representative gave the soil samples to Mr. Menges who was to submit all samples for laboratory analysis. One sample was submitted for analysis and was found to contain petroleum contaminants: total petroleum hydrocarbons as gasoline at 1900 ug/g (parts per million or ppm), toluene at 5.6 ppm, ethylbenzene at 3.6 ppm and total xylenes at 50 ppm. MtBE was not analyzed at the time. The remaining four samples were not analyzed.

On May 9, 1995, the Regional Water Quality Control Board (Regional Water Board) staff sent a letter to Mr. Menges requiring a site investigation. This letter requested submittal of a workplan by July 3, 1995. On December 2, 1996, Mr. Menges' consultant submitted a workplan for the required site investigation. The Regional Water Board staff concurred with the workplan in a letter dated March 14, 1997 and requested a report of investigation findings by July 31, 1997. No report of findings was ever submitted, and on January 23, 1998 the Regional Water Board staff requested a progress update from Mr. Menges by March 2, 1998. No progress report was received, and on April 12, 1999, October 19, 1999 and January 19, 2000, Regional Water Board staff issued letters regarding implementation of the necessary site investigation.

Mr. Menges submitted a letter on December 16, 2000 stating that he was unable to proceed with the work due to financial limitations. However, the financial burden could have been significantly alleviated through the Underground Storage Tank Cleanup Fund (USTCF). Previously Mr. Menges was placed on the USTCF Priority List. However, because he did not conduct the needed work, the USTCF staff removed Mr. Menges from the Priority List on September 19, 1996. Mr. Menges subsequently regained eligibility for financial assistance from the USTCF, but on March 31, 1998, Mr. Menges was again removed from the Priority List for failing to conduct the needed work in accordance with Regional Water Board directives. On January 19, 2000, the Regional Water Board staff suggested that Mr. Menges again apply for financial assistance from the USTCF. However, in a letter dated February 13, 2000, Mr. Menges stated that he could not proceed with the necessary work due to financial considerations.

### DISCUSSION

On December 28, 2000, an order was issued to Mr. Menges pursuant to California Water Code (CWC) Section 13267(b) requiring submittal of a report of workplan implementation or new workplan by July 24, 2000. Mr. Menges has not submitted a report or new workplan, and is therefore in violation of CWC Section 13267(b), for which the Regional Water Board can issue an Administrative Civil Liability Complaint (ACLC) pursuant to CWC Sections 13268 and 13323. On May 4, 2001, the Executive Officer issued ACLC No. R1-2001-35 to Mr. Menges for failure to submit the required report or new workplan. An ACLC in the amount of \$30,000 was proposed by the Executive Officer with \$15,000 of that amount suspended contingent upon submittal of the report or new workplan by July 15, 2000.

Regional Water Board staff have contacted Mr. Menges regarding the ACLC. Mr. Menges believes that other responsible parties including California Department of Transportation and previous sole proprietors are "equally responsible" for conducting the investigation. Staff has looked into Mr. Menges' allegation; however, no evidence could be found that prior owners of the property or USTs were responsible for the contamination that exists at the site. Mr.

Menges also claims that he does not have financial resources to pay the proposed ACLC. On June 6, 2001, Mr. Menges submitted a letter providing his account of the history of ownership of the Macdoel General Store site (Attachment 1), and on June 10, 2001, requested a public hearing be held on July 26, 2001 in Yreka, Siskiyou County instead of the scheduled hearing on June 28, 2001 in Santa Rosa (Attachment 2). Since Mr. Menges did not settle the ACLC and waive his right to a public hearing, a public hearing is scheduled to consider affirmation, rejection or modification of the ACLC.

#### ADMINISTRATIVE CIVIL LIABILITY

In determining the amount of civil liability, the Regional Water Board must take into account the nature, circumstances, extent, and gravity of the violation, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require, as follows:

a. The Nature, Circumstances, Extent, and Gravity of the Violations:

Failure to submit reports of compliance with the terms of CWC Section 13267(b) is a serious violation. Lack of submitted data does not allow the Regional Water Board to adequately review the environmental contamination to ensure protection of water quality.

b. Economic Savings:

The estimated economic savings from failure to conduct an initial site investigation for petroleum hydrocarbon contamination is estimated at \$15,000.

c. Degree of Culpability:

Mr. Menges failed to comply with the December 28, 2000 Order to submit a site investigation report or revised site investigation workplan.

d. Prior History of Violations:

Mr. Menges has failed to comply with written Regional Water Board requests dated May 9, 1995, March 14, 1997, January 23, 1998, April 12, 1999, October 19, 1999, January 19, 2000, June 21, 2000, and August 10, 2000 to conduct an investigation of the contamination at the site.

e. Susceptibility to Cleanup and Voluntary Cleanup Efforts Undertaken:

Cleanup needs cannot be determined without assessment of the extent of contamination. Ongoing migration of pollutants released at the site may be occurring.

f. Degree of Toxicity:

The degree of toxicity of the discharge is unknown because an investigation to determine the extent of contamination has not been conducted.

g. Ability to Pay and Ability to Continue in Business:

Beyond the submitted letters, the Regional Water Board staff has no information regarding Mr. Menges' ability to pay. Mr. Menges should be prepared to address his ability to pay the maximum civil liability or any lesser amount.

h. Other Matters as Justice May Require:

Mr. Menges is operating at an unfair economic advantage to other similar firms who are in compliance with Regional Water Board Orders requiring investigation and cleanup at contaminated sites.

## CONCLUSIONS

Mr. Menges has not complied with the Executive Officer's 13267 Orders, ACL Complaint No. R1-2001-35, and has not waived his right to a hearing before the Regional Water Quality Control Board in this matter.

## RECOMMENDATION

Affirm Administrative Civil Liability Complaint No. R1-2001-35 by issuing Administrative Civil Liability Order No. R1-0107-3ACL\*, which imposes an administrative civil liability of \$30,000, but which (unlike the Complaint) does not provide for suspension of half that amount upon submission of the required report.

\*Temporary order number, and final number will be assigned when adopted.

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